UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JON ANTHONY BELL, WILLIAM FRANK CHAMBERS, MICHAEL JON FOX and DAVID YU PIN YANG

Appeal 2006-3403
Application 10/042,794
Technology Center 2100

Decided: March 6, 2007

Before KENNETH W. HAIRSTON, HOWARD B. BLANKENSHIP, and MAHSHID D. SAADAT, *Administrative Patent Judges.*

HAIRSTON , *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1 to 31[1]. We have jurisdiction under 35 U.S.C. § 6(b).

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[1] The Appendix to the Brief indicates that claims 24 and 26 to 28 are cancelled. Accordingly, the claims still before us on appeal are claims 1 to 23, 25 and 29 to 31.

Appellants have invented a method and system for migrating configuration data from a first executable product to a second executable product. An external agent instructs the first executable product to provide a file containing selected configuration data. The selected configuration data in the file is in a format acceptable to the second executable product. (Specification 8 and 9).

Claim 1 is representative of the claims on appeal, and it reads as follows:

1. A method of migrating configuration data from a first executable product to a second executable product, the method comprising:

instructing, from an external agent, the first executable product to provide a file containing selected configuration data; and

producing, by the first executable product, the file containing the selected configuration data in a format acceptable to the second executable product.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Green	US 5,969,704	Oct. 19, 1999
Aiken	US 6,430,622 B1	Aug. 6, 2002 (filed Sept. 22, 1999)
Mackin	US 6,728,877 B2	Apr. 27, 2004 (filed Apr. 28, 1999)
Weschler	US 6,757,720 B1	June 29, 2004 (filed May 19, 1999)

The Examiner rejected claims 1 to 3, 7 to 11, 14 to 16, 18 to 20 and 25 under 35 U.S.C. § 102(e) based upon the teachings of Mackin. The Examiner rejected claims 12, 13 and 17 under 35 U.S.C. § 103(a) based

upon the teachings of Mackin and Green, the Examiner rejected claims 4 to 6 and 21 to 23 under 35 U.S.C. § 103(a) based upon the teachings of Mackin and Weschler, and the Examiner rejected claims 29 to 31 under 35 U.S.C. § 103(a) based upon the teachings of Mackin and Aiken.

Appellants contend that Mackin automatically transitions configuration settings from a source computing system to a target computing system, and that the transition occurs without an external agent instruction to the source computing system to create a file of selected configuration data for the target computing system (Br. 9).

We affirm-in-part.

ISSUE

Does Mackin describe the use of an external agent to instruct the source computing system to create a file of selected configuration data for the target computing system?

FINDINGS OF FACT

As indicated *supra*, Appellants use an external agent to instruct the first executable product to provide a file containing selected configuration data in a format acceptable for use by the second executable product. Appellants' disclosure indicates (Specification 8):

> In preferred embodiments, this technique is initiated by the receipt of an asynchronous command from an external agent. By way of example, such initiation may be the result of the execution of a batch file containing a scripted command, an automatic system scheduler which operates at a predefined time (such as at the startup of the host computer system) to execute scheduled executable products, or manual insertion of a

> command by an individual through an input device such as a keyboard or computer console.

Mackin describes a method and system that automatically migrates configuration data from a source computing system to a target computing system (Figs. 1 and 3; col. 7, ll. 14 to 16). Mackin uses object-oriented programming techniques (e.g., Object Linking and Embedding (OLE) or Active X) to accomplish the transfer of configuration data (col. 7, l. 34 to col. 8, l. 2). According to Mackin (col. 8, ll. 10 to 13), "[a]n OLE or Active X control is an object that accepts and responds to events, such as a selection by a mouse or a key on a keyboard, or a selection by another object-oriented member function." A user-interface application at the source computing system responds to the user's keyboard or mouse input, and places the configuration data in a file format that is acceptable to the target computing system (col. 3, ll. 25 to 40).

Green is concerned with batch files, configuration data and time scheduling of tasks; however, the noted teachings are applied to a configurable LED matrix display, and not to the migration of configuration data from one computing system to another computing system (Fig. 6; col. 1, ll. 20 to 27; col. 3, l. 46 to col. 4, l. 67).

Aiken describes the use of OROUTED daemon and OMPROUTE daemon in the movement of data from one source to another source (col. 3, ll. 56 to 67; col. 17, ll. 9 to 26).

PRINCIPLES OF LAW

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

In an obviousness rejection, the Examiner must establish a factual basis to support the legal conclusion of obviousness. *In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). "Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor." *Para-Ordnance Mfg. V. SGS Importers Int'l*, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995).

ANALYSIS

As indicated *supra*, the external agent in the disclosed and claimed invention (i.e., claims 1 to 3, 7 to 11, 14 to 16, 18 to 20 and 25) and in Mackin can be a system user's keyboard command.

Turning to the combined teachings of Mackin and Green in the obviousness rejection of claims 12, 13 and 17, we find that the skilled artisan would have to resort to impermissible hindsight to demonstrate the obviousness of using the batch file, configuration data and time scheduling display teachings of Green to modify the configuration data migration teachings of Mackin.

Turning next to the obviousness rejection of claims 4 to 6 and 21 to 23, Appellants did not present any patentability arguments for these claims.

Turning lastly to the obviousness rejection of claims 29 to 31, we find that the skilled artisan would have found it obvious to use the OROUTED daemon and the OMPROUTE daemon as taught by Aiken in Mackin to provide an alternative technique for migrating data from one source to another source.

CONCLUSIONS OF LAW

Anticipation of the subject matter set forth in claims 1 to 3, 7 to 11, 14 to 16, 18 to 20 and 25 has been established by the Examiner because Mackin uses an external agent (i.e., a user's keyboard command) to instruct the source computing system to create a file of selected configuration data for the target computing system as claimed by Appellants.

As indicated *supra*, the obviousness of the claimed subject matter set forth in claims 12, 13 and 17 has not been established by the Examiner because the display teachings of the secondary reference to Green are not pertinent to the configuration data migration teachings of Mackin.

The absence of a response by Appellants is taken by the Board to be an acknowledgment by Appellants that the Examiner made a proper showing of obviousness of claims 4 to 6 and 21 to 23.

With respect to claims 29 to 31, the reference to Aiken clearly describes the use of OROUTED and OMPROUTE daemons in the transfer of data from one source to another source.

DECISION

The anticipation rejection of claims 1 to 3, 7 to 11, 14 to 16, 18 to 20 and 25 is affirmed. The obviousness rejections of claims 4 to 6, 12, 13, 17, 21 to 23 and 29 to 31 are affirmed as to claims 4 to 6, 21 to 23 and 29 to 31, and are reversed as to claims 12, 13 and 17.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR §1.136(a)(1)(iv).

AFFIRMED-IN-PART

PGC

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